THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.7426 OF 2006

Dated 5th October, 2007

Between:

M/s G.Prasada Rao …Petitioner

And

Srinivasa Trading Company and
Two others …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.7426 OF 2006

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties. At the stage of vacate stay petition, with the consent of learned counsel for the parties, the writ petition is being disposed of.

The petitioner is aggrieved of attachment notice dated 18-02-2006 issued under Section 27 of the Andhra Pradesh Revenue Recovery Act. The case of the petitioner is that he stood surety for the assessment year 1997-98 to the first respondent, but the demands have been made from him for the years 1998-99, 1999-2000 and 2000-2001 and as such, he is not liable on behalf of the assessee in view of the law laid down by this Court in number of cases including **New Kamal Bar & Café, Hyderabad vs. State of Andhra Pradesh & others**[1].

Learned Special Standing Counsel for Commercial Taxes, however, contends that the surety has been given on 31-07-1997. Rule 28(8) of the Andhra Pradesh General Sales Tax Rules, 1957 (for short "the Rules") lays down that the surety shall be responsible for the liability equal to tax payable under the Act for a year as estimated by the assessee and even if the interpretation placed on Rule 28(8) of the Rules by earlier judgment is accepted, the petitioner shall have to take the responsibility on behalf of the assessee from 31-07-1997 to 30-07-1998. Learned counsel for the petitioner submits that 'year' has been defined under Section 2(u) of the Andhra Pradesh General Sales Tax Act (for short "the Act") to mean "the twelve months ending on the 31st day of March". We have also been shown form-D which is the relevant form and under clause (19) of form-D it is stated "the estimated

total turnover for the year in which application is submitted". Therefore, what Rule 28(8) of the Rules read with Section 12(7) of the Act and clause (19) of Form-D and definition of year under Section 2(u) lay down is that the surety shall be responsible for the liability of the assessee for the accounting year in which the surety is furnished. Therefore, even if the surety is furnished on 31-07-1997, it would become applicable from 01-04-1997 and would remain in force till 31-03-1998. In this view of the matter, we find that the respondents have no cause against the petitioner to claim the tax from 01-04-1998.

The Writ Petition is accordingly allowed and the impugned notice is set aside. However, the Department shall be at liberty to recover the amounts due from the assessee-first respondent in accordance with law. No order as to costs.

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Bilal Nazki,J

Dated 5th October, 2007

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Ramesh Ranganathan,J

vrn

[1] 42 APSTJ 77